

REMARKS/ARGUMENTS

In response to the Office Action mailed June 2, 2005, Applicants respectfully request reconsideration. The bases for the request are an unduly expansive interpretation of the principal reference and an improper connotation given to the dictionary definition of the term "adjacent".

A review of the lengthy and complex prosecution history of this patent application would require an extended discussion that would divert attention from the current issue. Therefore, for an explanation of the invention and claims, reference is made to the prior amendments and their remarks. The issue at hand is the construction of the amended claims presented February 3, 2005. That claim construction of the Office Action mailed June 2, 2005 is respectfully traversed.

There are four pending claims, claims 15-18, of which claims 15 and 17 are independent claims. The independent claims are rejected as unpatentable over Li et al. (U.S. Patent 5,835,678, hereinafter Li) in view of Zhao et al. (U.S. Patent 6,210,485, hereinafter Zhao). An additional prior art publication was cited in rejecting dependent claims 16 and 18. However, if claims 15 and 17 are not obvious, then all four claims must be allowed so that there is no discussion of the separate rejection of claims 16 and 18 here.

As acknowledged at page 4 of the Office Action, the two independent claims were identically amended in February 2005 by the addition of a description of the cooling block as being "in physical contact with a portion of the spray nozzle adjacent the plate". The underlined words were added in that amendment. It is the Examiner's position that this added description is fully disclosed in Li and, therefore, the amendment did not overcome the prior rejection.

What is considered to be the plate in Li requires careful analysis of Li since the Examiner considered the "baffle plate", an unnumbered element of Figure 2 of Li, to correspond to that plate. It is presumed that the "baffle plate", a term never used in Li, is the horizontal element shown in Figure 2 of Li that surrounds and is in contact with the tip of the conical element 24, characterized by Li as a nozzle. In explaining the continuing rejection, attention was directed to Figures 5A and 5B of Li. Those figures purportedly show nozzles 24" and 24', respectively. It appears that the cited reference numbers do not point to what Li considers a nozzle with respect to reference number 24 in Figure 2. In Figure 2, the nozzle

24 is the conical element. Both the elements 24'' and 24' in Figures 5A and 5B, identified as ultrasonic nozzles by Li, appear as rectangular blocks. Giving the Examiner the benefit of potentially inartful drafting of the portion of Li pertaining to Figures 5A and 5B, it is presumed the Examiner is directing attention to the conical elements in Li. The reference numbers 24'' and 24' appear to refer to the driving portions of the ultrasonic nozzles, not the conical portions that might correspond to the nozzle of the claims. The reliance on the rectangular boxes 24'' and 24' in Figures 5A and 5B in Li as nozzles has led to one of the errors in the rejection.

Given the foregoing description, what is presumed to be the Examiner's interpretation of the plate in Figure 5A of Li is marked in red on the attached Figure 5A. A similar element is not found in Figure 5B of Li and it is not known what element in that figure is relied upon in the rejection. In supplying the attached figure, Applicants do not concede that the element marked in red on Figure 5A is a plate because there is no such description in Li. The cross-sectional view of Figure 5A may well be showing, rather than a plate, two horizontal edges where there are changes or corners in the internal shape of what the Examiner has characterized as the cooling block 25''. This potential misinterpretation of what is shown in Figure 5A of Li is even more strongly apparent in Figure 5B. There is no corresponding element anywhere near the conical element in that Figure 5B. Moreover, whatever is drawn at the outlet of the structure shown in Figure 5B of Li is not apparent.

Further, the Examiner's interpretation of the apparent elements in Figures 5A and 5B of Li as plates seems clearly erroneous when compared to the description of the structure shown in Figure 2 of Li. Every plate, i.e., porous element, in Figure 2 of Li includes cross-hatching, including the unnumbered "baffle plate" and the other similar elements. Additionally, two other unmarked plate-like elements are shown in that Figure 2 of Li, but are given reference numbers only in Figures 3A and 3B of Li. These elements are identified as porous disks and are cross-hatched.

No similar cross-hatching and no similar identification appears anywhere within Li with respect to the element of Figure 5A marked in red on the attachment and apparently assumed by the Examiner, as part of the rejection, to be a plate. As noted, there is not even a candidate element for such a plate in Figure 5B of Li. For these reasons, the Examiner's interpretation of what is disclosed in Li is fatally flawed, vitiating the rationale of the

rejection. For that first reason, reconsideration and withdrawal of the maintained rejection are respectfully requested.

Even if it is assumed that the element marked in red on the attached Figure 5A of Li is a plate, the rejection is still erroneous because an inappropriate interpretation has been made with respect to the dictionary definition applied in maintaining the rejection. According to page 4 of the Office Action, the dictionary definition attached to the Office Action shows that the definition of “adjacent” is “not far”. This recitation of what is described in the dictionary definition is, disappointingly, erroneous. The attachment shows that the meaning of the term adjacent is “lying near, close, or contiguous; adjoining; neighboring; *a motel adjacent to the highway.*” The dictionary attachment, similar to the definitions employed in distinguishing “adjoining” and “adjacent” in *International Rectifier Corp. v. IXYS Corp*, 70 USPQ2d 1209 (Fed.Cir. 2004), is illuminated by the commentary following the word “adjoining” in that dictionary attachment to the Official Action. According to the distinctions between the words “adjoining, adjacent, and bordering” supplied in the same column of the excerpt attached to the Official Action, adjacent “implies being nearby or next to something else: *all the adjacent houses; adjacent angles.*”

The point to be derived from the dictionary excerpt attached to the Office Action and the Office Action is that the definition of “adjacent” applied in the Office Action is not found in the dictionary definition attached to the Office Action. The differences between the two definitions is not trivial in the context of the rejection. This point can be understood by considering that dictionary excerpt. Clearly, a motel adjacent to a highway could invoke any of the definitions given for “adjacent”. On the other hand, considering the explanation example, *all the adjacent houses*, it is apparent, assuming the houses to be detached, that what is meant by “adjacent” must be measured in the context of the usage. For example, in an urban setting, the adjacent house might be separated from the house of reference by portions of two contiguous lots of ground through which a property boundary line passes. The meaning, in terms of distance, of adjacent might be vastly different in the rural western United States. Clearly, when the term “adjacent” is being construed quantitatively, context is everything.

Turning to the Examiner’s interpretation of Figure 5A of Li, it is apparent that the context of the word “adjacent” has not been properly applied. First, Li and/or the Examiner has changed the interpretation of what constitutes the nozzle. The term “nozzle” is no longer

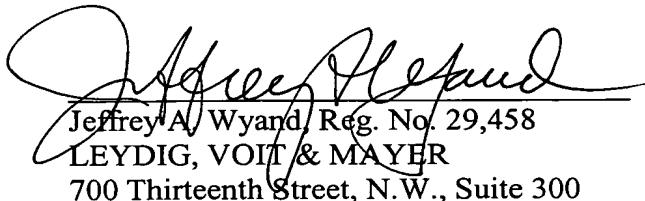
confined to the conical element 24 of Figure 2 but now is a rectangular object at the top of Figure 5A, presumably to the exclusion of the unnumbered conical element appearing in that figure. The cooling block of Figure 5A of Li is not in physical contact with any portion of the spray nozzle when the spray nozzle is understood, as in Figure 2 of Li, to be the conical element. It is that Figure 2 that is relied upon to show a “baffle plate” to meet the plate limitation of claims 15 and 17. Therefore, a choice should be made between Li’s embodiments, (i) the conical nozzle 24 of Figure 2 with an unnumbered plate allegedly corresponding to the plate of the claims or (ii) the drive part of an ultrasonic nozzle with no element corresponding to the plate of the claims any where, much less “contacting and locating” the nozzle.

Even ignoring the inconsistency in selecting nozzles and plates from Li, assuming that the element colored red in the attachment is a plate, it is apparent that the location of physical contact between the elements 24” and 25 in Figure 5A of Li is not “lying near, close, or contiguous; adjoining; neighboring;” i.e., adjacent, that “plate”, in the context of Li. Even adopting the alleged definition of “adjacent” of the Official Action, it is apparent that the location of that nozzle-cooling block contact at the top part of Figure 5A cannot be properly characterized as “not far” from the plate 39 in the context of Li. That context is shown by the inlet and outlet 29” and 30” for circulation of a cooling fluid flowing through the jacket 26”. Those ports are clearly widely spaced apart in context of Li based on the thermodynamic considerations that are the context of Li. This context must be used for determining “near” and “far” in the structure of that Figure 5A of Li. When that context is understood, then clearly it is not rational to assert that the area of contact between elements 24” and 25 in Figure 5A of Li is either “close by” or “not far” from the element alleged to be a plate in that figure. Therefore, the claim term “adjacent” has not been properly construed in the context of Li, leading to an incorrect construction of claims 15 and 17 and an erroneous rejection.

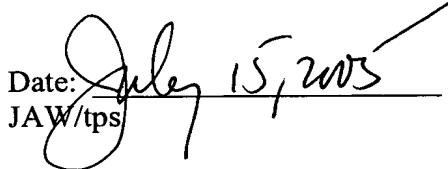
For the foregoing second reason, upon reconsideration, the rejection of claims 15 and 17 and, therefore of claims 16 and 18, should be withdrawn.

Reconsideration, withdrawal of the rejection, and allowance of the four pending claims are earnestly solicited.

Respectfully submitted,


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Amendment or ROA - Final (Revised 5/19/05)